IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10066 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VIJAY VANKAR UTPADAN SAHAKARI MANDALI LIMITED - Petitioner(s)
Versus
THE MANAGER (K.V.C.I) AND DISTRICT REGISTRAR & 1 - Respondent(s)

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Appearance :
MR UTKARSH B JANI for Petitioner(s) : 1,
MS ML SHAH, AGP for Respondent(s) : 1,2.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 02/11/2006

ORAL JUDGMENT

1. Rule. Learned AGP Ms. M.L. Shah waives service

of notice of rule on behalf of respondents no. 1 and 2.

2. The petitioner challenges an order dated 7-3-2006 passed by the Joint Director (Administration) Cottage and Rural Industries, Government of Gujarat. By the said order, application of the petitioner for releasing rebate for the year 2003-2004 came to be turned down.

3. Shortly stated, facts leading to the petition are that the petitioner is a cooperative society. The petitioner under normal circumstances is entitled to receive rebate at the rates fixed by the Government for production and sale of certain items under Dindayal Hath Kargha Protsahan Scheme. Earlier the petitioner had approached this Court by filing Special Civil Application No.4151/2004 challenging the order dated 14-7-2003 cancelling such rebate. This Court quashed the order on the ground that no opportunity of hearing was

granted before passing such order. Liberty however, was given to the Government to pass fresh order after issuing show cause notice to the petitioner.

4. In the present petition, however, we are not concerned with the question of recognition or cancellation thereof. The question pertains to non releasing of the rebate for the relevant period for the year 2003-2004.

5. In the impugned order, respondent no.2 has recorded that the inspection team had visited the premises of the petitioner on which date not a single loom was operating. On this ground, claim of rebate was turned down.

6. At the outset, learned AGP Ms. Shah submitted that order passed by respondent no.2 is not appealable. Objection of the petitioner not having filed appeal if any raised earlier, therefore, does not survive.

7. Learned advocate Shri Jani for the petitioner submitted that the petitioner had in fact carried out production activity through its members all through out during the relevant period and only for a short period, the activity was discontinued for valid reasons. In fact this was also communicated to the authorities by communication dated 12-5-2003. It was during the period when the petitioner had decided to temporarily stop the activity of production of cloth that respondents carried out inspection despite prior notice of such suspension of work temporarily. From the order of grant, learned advocate pointed out that the requirement of availing rebate is that the production activity must be continued for a minimum of 200 days and rebate is allowable upto a maximum of 250 days of production. He therefore, pointed out that if for a limited period for valid reasons, the petitioner did not carry out the production activity, the same cannot dis-entitle the petitioner from claiming rebate.

8. Learned AGP Ms. Shah on the other hand supported the impugned order and submitted on the basis of affidavits filed on record that the petitioner was claiming rebate for the period during which there was no production. For the very period, the petitioner has also raised bills for grant of rebate.

9. Having heard learned advocates appearing for the parties, It would appear that solely on the ground that on a single inspection if it was found that the manufacturing activity was not going on, that by itself would not permit the respondents to withhold the rebate. If the petitioners are able to establish on record that they fulfill all terms and conditions for grant of rebate, that manufacturing activity did take place during the relevant period and that rebate is claimed to the extent of goods already produced and sold, the case of the petitioner should be considered in accordance with the Government policy.

10.The question on actual release of rebate has to be decided by the authority after examining all relevant aspects of the matter. Though before passing the impugned order, no formal notice was given to the petitioner, in facts of this case, I find that principles of natural justice would be met with if the petitioner is given sufficient opportunity to produce material on record to establish its case for rebate and such material is considered by respondent no.2 before passing a fresh order.

11.In the conclusion, the impugned order dated 7-3-2006 is quashed. The petitioner shall have liberty to produce additional material if so desired before the authority. The authority will take fresh decision considering the material on record and the Government policy. If the petitioner produced additional material within a period of two weeks from today, same shall also be taken into account. If the respondents require any further evidence or clarification from the petitioner, it will be open for the

respondents to do so. The entire exercise will be completed expeditiously and preferably within a period of three months from the date of receipt of a copy of this order.

12. With these directions, the petition is disposed of. Rule made absolute to the above extent with no order as to costs.

(Akil Kureshi, J.)

(raghu)